IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Reserved on:05.09.2024
Pronounced on: 26.09.2024

CRM-M-16624-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Kissan Commission Agent and ors. ......Respondents

CRM-M-16830-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Sony Enterprises and ors. ......Respondents

CRM-M-16833-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Sarabjit Dhawan and sons and ors. ......Respondents

CRM-M-16848-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Pehalwan Trading Company and ors. ......Respondents

CRM-M-16849-2023

Rakesh Kumar ......Petitioner

Vs.

M/s G.S. Commission Agent and ors. ......Respondents

CRM-M-16863-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Barkat Ram and sons and ors. ......Respondents

CRM-M-16888-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Rajiv Sondhi and Company and ors. ......Respondents

CRM-M-16891-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Pyara Lal and sons and ors. ......Respondents

CRM-M-27482-2023

Om Parkash Dhall and another ......Petitioners

Vs.

M/s Kabir Sondhi and Company and ors. ......Respondents

CRM-M-27940-2023

Om Parkash Dhall and another ......Petitioners

Vs.

M/s Harsandhu Trading Co. and ors. ......Respondents

CRM-M-27481-2023

Om Parkash Dhall ......Petitioner

Vs.

M/s Pehalwan Trading Co. and ors. ......Respondents

CRM-M-28162-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s K.S. Trading Co. and ors. ......Respondents

CRM-M-28168-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s Barkat Ram and sons and ors. ......Respondents

CRM-M-28357-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s Sandhu Trading Co. and ors. ......Respondents

CRM-M-28360-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s Sony Enterprises and ors. ......Respondents

CRM-M-28365-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s Gurdial Commission Agent and ors. ......Respondents

CRM-M-28738-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s Jasbir Singh Commission Agent and ors. ......Respondents

CRM-M-28779-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s Money Trading Company and ors. ......Respondents

CRM-M-28832-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s Gurjot Singh and sons and ors. ......Respondents

CRM-M-29246-2023

Om Parkash Dhall and anr. ......Petitioners

Vs.

M/s New Trading Company and ors. ......Respondents

CRM-M-40589-2023

Om Parkash Dhall and others ......Petitioners

Vs.

M/s Sarbjit Dhawan and sons and ors. ......Respondents

CRM-M-40607-2023

Om Parkash Dhall and others ......Petitioners

Vs.

M/s Gurdial Singh Commission and ors. ......Respondents

CRM-M-40646-2023

Om Parkash Dhall and others ......Petitioners

Vs.

M/s Barkat Ram and sons and ors. ......Respondents

CRM-M-9669-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Money Trading Company ......Respondent

CRM-M-16595-2023

Rakesh Kumar ......Petitioner

Vs.

M/s Gurdial Singh Commission and others ......Respondents

CRM-M-29370-2023

Om Parkash Dhall and another ......Petitioners

Vs.

M/s Rakesh Kumar Ramesh Kumar Trading Co. and others......Respondents

CRM-M-29403-2023

Om Parkash Dhall ......Petitioner

Vs.

M/s Charan Singh Baldev Raj and others ......Respondents

CRM-M-36861-2023

Om Parkash Dhall and others ......Petitioners

Vs.

M/s Rajiv Sondhi and Co. and others ......Respondents

CRM-M-40534-2023

Jaipal and others ......Petitioners

Vs.

M/s G.S. Commission and others ......Respondents

CRM-M-40540-2023

Om Parkash Dhall and others ......Petitioners

Vs.

M/s Sony Enterprises and others ......Respondents

CRM-M-40543-2023

Om Parkash Dhall and others ......Petitioners

Vs.

M/s Money Trading Company and others ......Respondents

CRM-M-40551-2023

Om Parkash Dhall and others ......Petitioners

Vs.

M/s Pyara Lal and sons and others ......Respondents

CRM-M-40574-2023

Om Parkash Dhall and others ......Petitioners

Vs.

M/s Kissan Commission Agent and others ......Respondents

CRM-M-40582-2023

Jaipal and others ......Petitioners

Vs.

M/s Charan Singh Baldev Raj and others ......Respondents

CRM-M-40586-2023

Jaipal and others ......Petitioners

Vs.

M/s Angrej Singh and Co. and others ......Respondents

CRM-M-16624-2023

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Deepak Vashisth, Advocate and
Mr. Amandeep Chhabra, Advocate
for the petitioner(s).

Mr. Vivek Dahiya, Advocate and
Mr. B.S. Sudan, Advocate
for the respondent(s).

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ANOOP CHITKARA J.

CRM-M-16624-2023	Criminal Complaint	No.263 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001991-2022
CRM-M-16830-2023	Criminal Complaint	No.266 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001994-2022
CRM-M-16833-2023	Criminal Complaint	No.269 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001997-2022
CRM-M-16848-2023	Criminal Complaint	No.270 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001998-2022
CRM-M-16849-2023	Criminal Complaint	No.261 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001999-2022
CRM-M-16863-2023	Criminal Complaint	No.264 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001992-2022
CRM-M-16888-2023	Criminal Complaint	No.267 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001995-2022
CRM-M-16891-2023	Criminal Complaint	No.257 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001985-2022
CRM-M-27482-2023	Criminal Complaint	No.211 of 2022 filed on 12.07.2022 bearing CNR No.PBTTA1-001677-2022
CRM-M-27940-2023	Criminal Complaint	No.181 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001499-2022
CRM-M-27481-2023	Criminal Complaint	No.181 of 2022 filed on 15.09.2022 bearing CNR No.PBTTA1-001497-2022
CRM-M-28162-2023	Criminal Complaint	No.184 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001496-2022
CRM-M-28168-2023	Criminal Complaint	No.174 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001504-2022
CRM-M-28357-2023	Criminal Complaint	No.168 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001509-2022
CRM-M-28360-2023	Criminal Complaint	No.165 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001512-2022
CRM-M-28365-2023	Criminal Complaint	No.166 of 2022 filed on 08.07.2022 bearing CNR No.PBTTA1-001511-2022
CRM-M-28738-2023	Criminal Complaint	No.177 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001502-2022
CRM-M-28779-2023	Criminal Complaint	No.185 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001495-2022
CRM-M-28832-2023	Criminal Complaint	No.172 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001505-2022
CRM-M-29246-2023	Criminal Complaint	No.171 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001502-2022
CRM-M-40589-2023	Criminal Complaint	No.1992 of 2022 filed on 12.09.2022 bearing CNR No.PBTTA1-001997-2022
CRM-M-40607-2023	Criminal Complaint	No.262 of 2022 filed on 12.09.2022 bearing CNR No.PBTTA1-001990-2022

CRM-M-40646-2023	Criminal Complaint	No.264 of 2022 filed on 12.09.2022 bearing CNR No.PBTTA1-001992-2022
CRM-M-9669-2023	Criminal Complaint	No.268 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001996-2022
CRM-M-16595-2023	Criminal Complaint	No.262 of 2022 filed on 12.09.2022 bearing CNR No.PBTTA1-001990-2022
CRM-M-29370-2023	Criminal Complaint	No.179 of 2022 filed on 05.07.2022 bearing CNR No.PBTTA1-001501-2022
CRM-M-29403-2023	Criminal Complaint	No.265 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001993-2022
CRM-M-36861-2023	Criminal Complaint	No.267 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001995-2022
CRM-M-40534-2023	Criminal Complaint	No.261 of 2022 filed on 12.09.2022 bearing CNR No.PBTTA1-001989-2022
CRM-M-40540-2023	Criminal Complaint	No.266 of 2022 filed on 12.09.2022 bearing CNR No.PBTTA1-001994-2022
CRM-M-40543-2023	Criminal Complaint	No.268 of 2022 filed on 12.09.2022 bearing CNR No.PBTTA1-001996-2022
CRM-M-40551-2023	Criminal Complaint	No.257 of 2022 filed on 12.09.2022 bearing CNR No.PBTTA1-001985-2022
CRM-M-40574-2023	Criminal Complaint	No.263 of 2022 filed on 19.09.2022 bearing CNR No.PBTTA1-001991-2022
CRM-M-40582-2023	Criminal Complaint	No.1988 of 2022 filed on 29.08.2022 bearing CNR No.PBTTA1-001993-2022
CRM-M-40586-2023	Criminal Complaint	No.214 of 2022 filed on 12.07.2022 bearing CNR No.PBTTA1-001674-2022

1. This order shall dispose of all the above mentioned petitions, as per the details of criminal complaint mentioned as above. For the sake of brevity, facts have been taken from CRM-M-16624-2023.

2. Aggrieved by the issuance of summons in the complaint captioned above, the accused has come up before this Court under section 482 CrPC for its quashing, submitting that the petitioner had no role in the firm's business, the other partner was the signatory of the cheque and was also the sole proprietor of the business, which fact is proved from the complaint, resultantly, the petitioner could not have been summoned for the alleged offense, which he never committed.

3. During the course of the business, certain cheques were handed over to the complainant, including the cheque in question, which bounced, leading to the issuance of notice and subsequently filing of the complaint Annexure P-1. The complainant filed the complaint against all the accused, including the petitioner and vide order dated 28.02.2023, bailable warrants were issued. The trial court summoned all the accused, including the petitioner. Feeling aggrieved by the summoning, he filed the present petition under section 482 Cr.P.C.

4. The complainant-respondent filed their response and stated that the petitioner actively deals with the business. Therefore, the petitioner is to discharge legal liability. It is a matter of evidence whether the petitioner can discharge the liability under the

Negotiable Instruments Act or not. Thus, the complainant sought the dismissal of the present petition.

5. The petitioner's counsel argued that in International small-scale industries Corporation Ltd versus Harmeet Singh PAI NTL Pentel 2010 volume 2 RCR criminal 122, considering the absence of a specific role, the Supreme Court absolved him of the liabilities. Similarly, in S and S Pharmaceuticals versus Mothanwala 2007 RCR criminal 126 Hon'ble Supreme Court held that the director's liability must be determined when the offence was committed and merely being a party to the resolution would not be sufficient. In one Mahla service, private limited versus Nunera 2015 volume 1 SEC civil 433 Supreme Court took a similar view.

6. The respondent's counsel seeks dismissal of the petition and submits that the appropriate stage for discharge is before the trial Court and not the inherent jurisdiction of this Court.

7. It is most appropriate to extract the relevant portion of the complaint, which reads as follows:

> *"5. That on demanded of the above said amount, the accused issued one part payment cheque bearing No."296757" dated 30.04.2022 of Rs.1,19,943/- drawn at Canara Bank Branch Fazilka, District Fazilka of against accused bank account bearing No.1400261050504 of M/s Kissan Commission Agent for legal liability/on behalf of M/s J.K. Industries and accused No.2 Mukesh Kumar signed the above said cheque being authorized signatory/sole proprietor of M/s Kissan Commission Agent firm in the presence of my client and witnesses."*

8. It is also most appropriate to extract the relevant portion of the reply filed to this petition, which reads as follows:

> *"4. A bare reading of the complaint makes it evident that the cheque in question was issued in discharge of the liability of M/s JK Industries, in which the petitioner is admittedly a partner. The petitioner cannot escape his liability as the liability of each and every partner in a partnership firm is joint and several."*

9. A perusal of the above makes it explictly clear that the petitioner was neither the signatory nor the proprietor of the firm which issued two cheques in question, as has been specifically mentioned in para 5 of the complaint *supra*.

10. Before anyone can be summoned to face a criminal trial, the Magistrate must search for primafacie legally admissible evidence, which attributes some role that makes out a penal offense.

11. In the present case, the complainant is silent about the petitioner's role and there is no evidence pointing out the petitioner's criminal liability with the cheque.

12. In Anil Hada v. Indian Acrylic Ltd., (2000) 1 SCC 1, Hon'ble Supreme Court holds,

> [9]. Three categories of persons can be discerned from the said provision [141 NIA] who are brought within the purview of the penal liability through the legal fiction envisaged in the Section. They are: (1) The company which committed the offence, (2) Everyone who was in charge of and was responsible for the business of the company, (3) any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence.
>
> [10]. Normally an offence can be committed by human beings who are natural persons. Such offence can be tried according to the procedure established by law. But there are offences which could be attributed to juristic persons also. If the drawer of a cheque happens to be a juristic person like a body corporate it can be prosecuted for the offence under Section 138 of the Act. Now there is no scope for doubt regarding that aspect in view of the clear language employed in Section 141 of the Act. In the expanded ambit of the word "company" even firms or any other associations of persons are included and as a necessary adjunct thereof a partner of the firm is treated as director of that company.
>
> [11]. Thus when the drawer of the cheque who falls within the ambit of Section 138 of the Act is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such drawer. In this context the phrase "as well as" used in sub-section (1) of Section 141 of the Act has some importance. The said phrase would embroil the persons mentioned in the first category within the tentacles of the offence on a par with the offending company. Similarly the words "shall also" in sub-section (2) are capable of bringing the third category persons traditionally within the dragnet of the offence on an equal par. The effect of reading Section 141 is that when the company is the drawer of the cheque such company is the principal offender under Section 138 of the Act and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per the Section. Hence the actual offence should have been committed by the company, and then alone the other two categories of persons can also become liable for the offence.
>
> [12]. If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for

> convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in Section 141 of the Act.

13. In Smt. Katta Sujatha v. Fertilizers & Chem. Travancore Ltd., (2002) 7 SCC 655, Hon'ble Supreme Court holds,

> [5]. In short the partner of a firm is liable to be convicted for an offence committed by the firm if he was in charge of and was responsible to the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned.
>
> [6]. To the same effect are the decisions of this Court in KPG Nayar v. Jindal Menthol Ltd., 2000(6) Scale 578 and Anil Hada v. Indian Acrylic Ltd., JT 1999(9) SC 223 : 2000(1) RCR(Criminal) 1 (SC). Examined in the light of these decisions and the law enunciated, we find no case as such has been made out for proceeding against the appellant.

14. In Venkatshwarn v. Singravel Yarn Traders., 2009(16) SCC 757 , Hon'ble Supreme Court holds,

> The present appeal is against the order passed by the High Court refusing to entertain the petition under Section 482 Criminal Procedure Code challenging the proceedings of complaint filed against the accused persons for the offence under Section 138 of Negotiable Instruments Act, 1881. The petition was filed on the ground that the appellants were not the partners and had nothing to do with the afore mentioned firm which was accused No.1 in the complaint. The learned Judge has observed that it was not possible at this stage to ascertain as to whether the concerne d appellants were the partners of the partnership firm and whether there was any partnership firm in existence. When we see the complaint filed in trial Court, it is very clearly stated as under:
>
> > "6. The second accused is guilty, as drawer of the cheque on behalf of Accused No.1, as its Managing Partner. The Accused Nos. 3 and 4 being partners of the Accused No.1, were in charge of and were responsible for the conduct of the business of Accused No.1, and shall also be deemed to be guilty of the offence."
>
> Therefore, the question as to whether the present appellants, who were accused No.3 and 4, were the partners of the firm and were responsible for conduct of business is the disputed question of fact which could not have been gone into under Section 482 Criminal Procedure Code The High Court was absolutely right in not entertaining that question. It would be during the trial for the accused persons to urge that they were not in any way concerned with the said partnership firm. In our opinion, the High Court was absolutely right in dismissing the petition under Section 482 Criminal Procedure Code.

15. In Sarojben Ashwinkumar Shah v. State of Gujarat, (2011) 13 SCC 316 , Hon'ble

Supreme Court holds,

> [17] …As regards the criminal liability of a partner in the firm, in light of the provisions contained in Section 141 of the Negotiable Instruments Act, there has to be evidence that at the time the offence was committed, the partner was in-charge of and was responsible to the firm for the conduct of the business of the firm.

16. In the light of the judicial precedents mentioned above and the peculiar facts and circumstances, it is a fit case where the continuation of criminal proceedings shall amount to an abuse of the process of law, and the Court invokes its inherent jurisdiction under section 482 CrPC to quash the summons qua the petitioner and all subsequent proceedings.

17. Given the findings above, present petitions are allowed. The summoning orders qua all the petitioners, are quashed and set aside. All pending applications stand closed in tune with this judgment.

(ANOOP CHITKARA)
JUDGE

26.09.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: NO.